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PATENT
674506-2035.2

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Smith, Gale E., *et al.*
Serial No. : 09/484,886
Filing Date : January 18, 2000
For : **IN VIVO ACTIVE ERYTHROPOIETIN PRODUCED IN INSECT CELLS**
Examiner : Srivastava, Kailsah C.
Art Unit : 1657
Confirmation No. : 1236

745 Fifth Avenue
New York, NY 10151

EXPEDITED PROCEDURE
RESPONSE AFTER FINAL ACTION

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on September 13, 2010.

Deborah L. Lu, Reg. No. 50,940
(Name of Applicant, Assignee or Registered Representative)

Deborah L. Lu
Signature

September 13, 2010

Date of Signature

NOTICE OF APPEAL, PETITION FOR EXTENSION OF TIME AND PETITION TO WITHDRAW FINALITY

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

09/17/2010 EFLORES 00000014 09484886

In response to the Advisory Action mailed August 26, 2010, Applicants submit a Notice of Appeal, a Petition for Extension of Time and Petition to Withdraw Finality. The Commissioner is hereby authorized to charge any additional fee which may be required for this paper, or credit any overpayment to Account No. 50-0320.

NOTICE OF APPEAL

To maintain pendency of the application, Applicants hereby appeal to the Board of Patent Appeals and Interferences from the decision of the final Office Action mailed March 12, 2010, rejecting claims 132-152. A check for **\$270.00** enclosed to cover the appeal fee required by 35 U.S.C. § 41(a)(6) and 37 C.F.R. § 41.20(b)(1) for a small entity.

PETITION FOR EXTENSION OF TIME

Pursuant to the provisions of 37 C.F.R. §1.17(a)(3), Applicants hereby request an extension of time of three (3) months in responding to the final Office Action of March 12, 2010. Granting of Applicants' request would serve to extend Applicants' due date from June 12, 2010 to Sunday, September 12, 2010. Enclosed is a check for \$310.00 to satisfy the difference in fee for a three (3) month extension of time minus the fee for a two (2) month extension of time for a small entity.

PETITION TO WITHDRAW FINALITY

Applicants respectfully submit that the "finality" of the Final Rejection mailed March 12, 2010 is premature because issue has not been met, and that such finality be withdrawn for the reasons discussed below.

In the Office Action dated March 12, 2010, the Examiner rejected claims 132-152 under 35 U.S.C. §112. Applicants respectfully submit that the new rejections were not necessitated by amendment of the previous response.

In particular, the 35 U.S.C. §112, first paragraph, rejection relates to EPO having an *in vitro* activity of at least 200,000 U/mg protein and 500,000 U/mg protein. Such a recitation was made in claims presented in an amendment filed March 25, 2009. Therefore, the new rejections were not necessitated by the amendment of the previous response as the recitation was present in the claims pending before the non-final office action.

The recitations that are the subject of the rejections under 35 U.S.C. §112 were in the claims pending before the issuance of a non-final office action. Therefore, Applicants are entitled to a first, non-final action on the merits to address these new rejections.

Accordingly, based upon the aforementioned reasons, Applicant respectfully requests that the present Final Rejection be withdrawn.

Applicants will file a request for refund for the appeal fee and the extension of time fee when finality is withdrawn and prosecution is reopened.

Respectfully submitted,
FROMMER LAWRENCE & HAUG LLP

By:

Deborah L. Lu

Thomas J. Kowalski
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